

WEBINAR WEDNESDAYS



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Prosecuting Strangulation Cases Using Evidence Based Prosecution

Presented by:

Catherine Ferguson-Gilbert
Deputy Maricopa County Attorney

&

Donielle Wright
Deputy Maricopa County Attorney

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ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
3838 N. Central Ave., Suite 850
Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

Prosecuting Strangulation Cases Using Evidence Based Prosecution

Catherine Ferguson-Gilbert and Donielle Wright, MCAO

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The pronoun “she” is used throughout this presentation to represent the victim, we recognize however that males are often victims of domestic violence.

Evidence Based Prosecution?

Evidence based prosecution is an approach to domestic violence cases which focuses on the available evidence regardless of the victim's willingness to participate in the case or testify against the abuser.

Strangulation investigations are actually homicide prevention

Victims of non-fatal strangulation are:

- 800% more likely to become a homicide victim
- 43% of women who are murdered in domestic assault were victims of non-lethal strangulation in the past year.

Glass et al. (2008). Non-fatal Strangulation is an Important Risk Factor for Homicide of Women, *The Journal of Emergency Medicine*, 35(3), 329-335.

Strangulation cases are DIFFICULT

- Uncooperative Victims
- Minimal corroboration
 - 50% of cases have NO visible injuries
 - Often there are NO witnesses
 - Lack of physical evidence
- Investigation problems
- Juror miseducation

Strangulation vs. Choking

Strangulation occurs when external pressure is applied to the neck



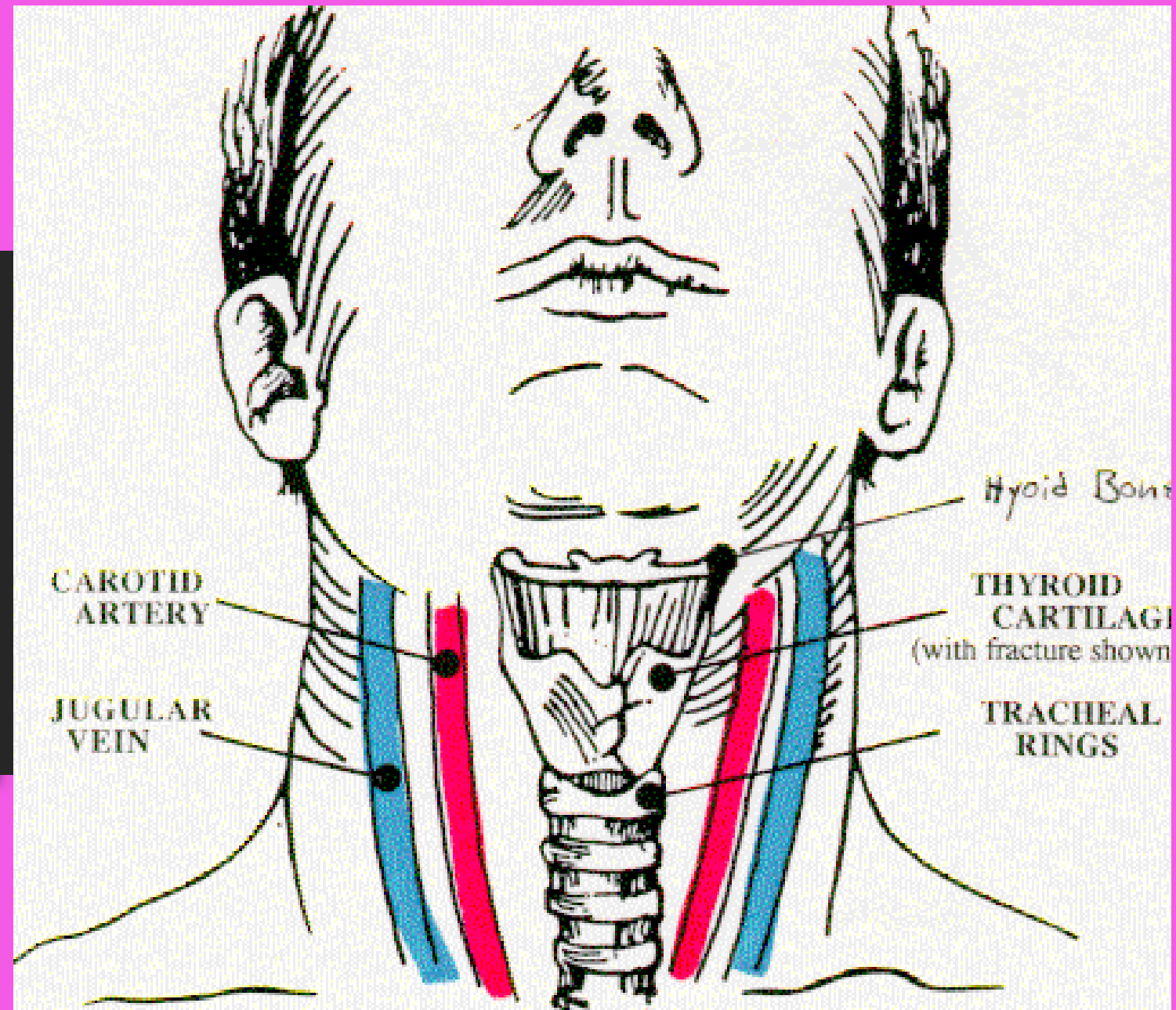
Choking occurs when an object becomes lodged in the airway



A.R.S. 13-1204(B), A.R.S. 13-1203(A)

- Intentionally, knowingly or recklessly causing any physical injury to another person,
- Intentionally placing another person in reasonable apprehension of imminent physical injury, or
- Knowingly touching another person with the intent to injure, AND
- Defendant intentionally or knowingly impeded the normal breathing OR circulation of blood of another person by...
 - Applying pressure to the throat or neck
 - Obstructing the nose and mouth
 - Manually or by using an instrument AND
 - The Defendant and Victim were in a DV relationship

How Strangulation affects breathing and blood flow



A Little Perspective



- 4.4 pounds of pressure can close the jugular vein
- 11 pounds of pressure can close the carotid arteries
- 30 pounds of pressure can close the trachea
- MEANWHILE...
- It only takes approx. 4-6 pounds of pressure to pull a trigger on a gun
- But, it takes 22 pounds of pressure to open a can of soda

Death by strangulation

- Death can occur to the victim in as little as 10-15 seconds of constant pressure
- Death by strangulation can occur on average within 1-10 minutes depending on variable such as:
 - Whether the pressure is constant or released and reapplied
 - The amount of force/pressure
 - The victim's underlying medical or intoxication condition
- Autopsies of victims who have died by strangulation often do not reveal any external injuries



Marks on the Neck

Scratches, abrasions, bruises, fingernail marks, ligature marks, etc.

Consider victim's description of strangulation- do injuries match?

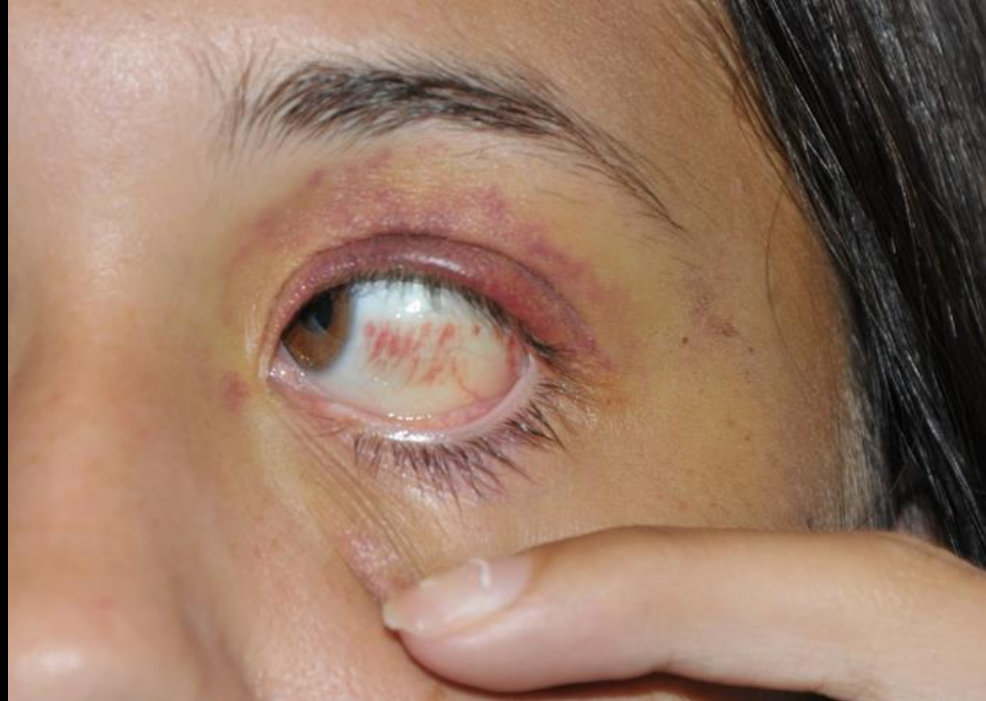
Rare to have extreme bruising/marks.



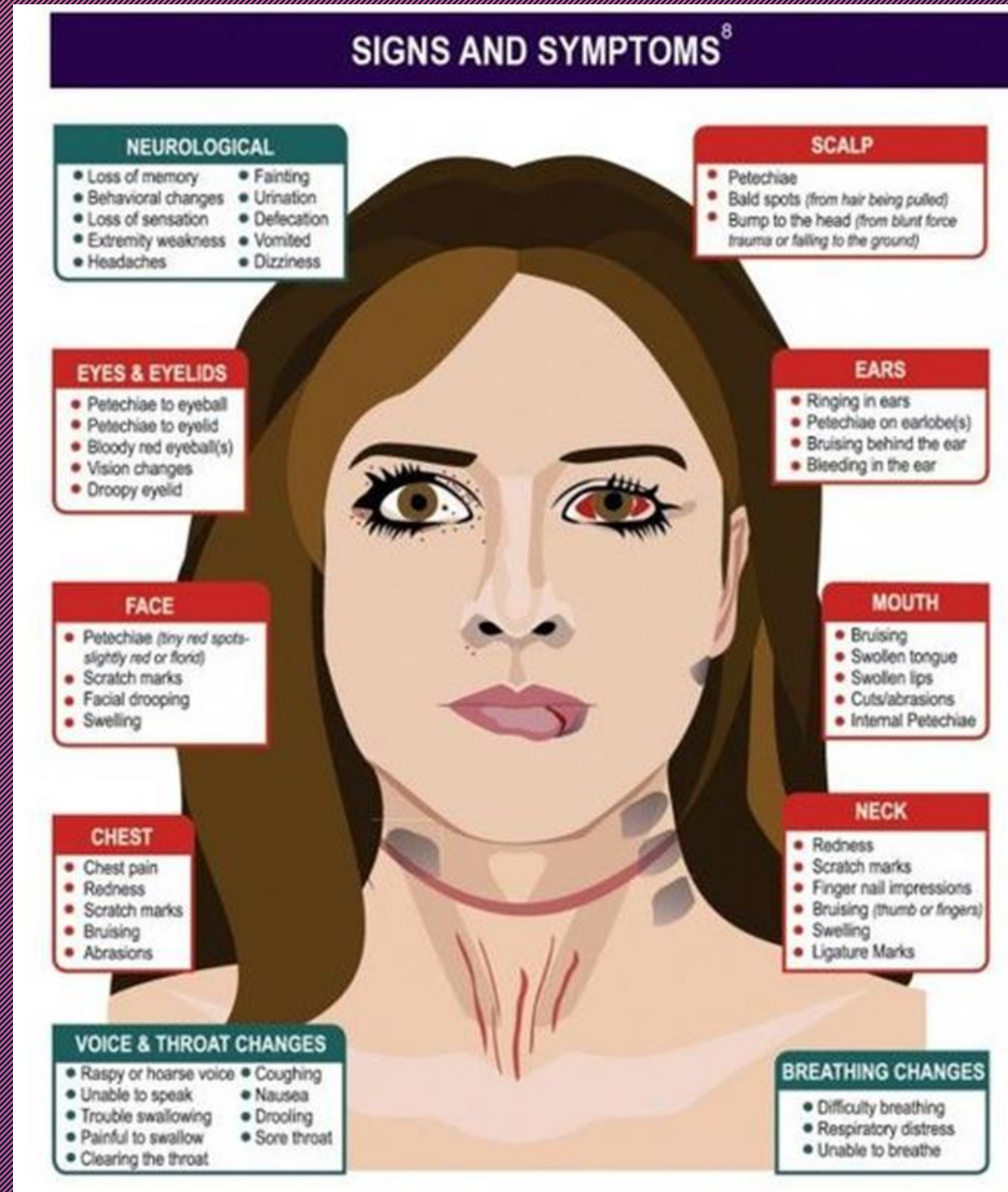
Petechiae

- Burst blood vessels from constriction of blood flow.
- Most common in eyes, back of throat, ears, neck.
- Lack of petechiae does not mean victim was not strangled





- Loss of consciousness
- Involuntary urination/defecation
- Dizziness, nausea, vomiting, headaches
- Difficulty breathing
- Voice changes
- Vision changes



Forensic Nurse Examination

- What happens?
 - Specially trained nurse.
 - Called to FAC or hospital.
 - Checks vitals.
 - Obtains medical history.
 - Obtains description of assault.
 - Documents symptoms & injuries.
 - Photographs injuries.
 - Discharge instructions.
- FNE is for medical treatment, not evidence collection!



FNE Symptom Checklist

Weapon used?	<input checked="" type="checkbox"/> No <input type="checkbox"/> fire arm <input type="checkbox"/> knife <input type="checkbox"/> Blunt object <input type="checkbox"/> Other
Physical contact?	<input type="checkbox"/> No <input checked="" type="checkbox"/> by hands <input type="checkbox"/> by feet <input type="checkbox"/> by head <input checked="" type="checkbox"/> grabbing <input checked="" type="checkbox"/> holding <input type="checkbox"/> slapping <input checked="" type="checkbox"/> punching <input type="checkbox"/> pinching <input checked="" type="checkbox"/> Other "his elbow"
Hair pulling?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Not Known <input type="checkbox"/> Yes Describe:
Was there physical restraint?	<input type="checkbox"/> No <input type="checkbox"/> Not Known <input checked="" type="checkbox"/> Yes Describe: "using both hands to hold me"
Did the assailant(s) lick/kiss/suck/bite/spit	<input type="checkbox"/> No <input type="checkbox"/> Not Known <input checked="" type="checkbox"/> Yes Where: see assault history
Was there any use of threats?	<input type="checkbox"/> No <input type="checkbox"/> Not Known <input checked="" type="checkbox"/> Yes Describe: "He said he was going to strangle and kill me and end it all"
Sexual relations as part of the assault?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Not Known <input type="checkbox"/> Yes Describe:
Was alcohol /drug use by patient part of the assault?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Not Known <input type="checkbox"/> Yes <input type="checkbox"/> Voluntary <input type="checkbox"/> Forced Describe:
Strangulation/Suffocation?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Number of times "twice"
Method(s) of Strangulation/Suffocation?	<input type="checkbox"/> One hand <input checked="" type="checkbox"/> Two hands <input type="checkbox"/> Ligature Describe: <input checked="" type="checkbox"/> Approached from front <input type="checkbox"/> Approached from behind <input type="checkbox"/> Other (describe) ex. Knee/foot
Mark all that apply:	<input type="checkbox"/> Loss of consciousness <input type="checkbox"/> involuntary urination/defecation during event <input checked="" type="checkbox"/> coughing <input type="checkbox"/> Drooling <input checked="" type="checkbox"/> Headache <input type="checkbox"/> lightheaded/dizziness <input checked="" type="checkbox"/> Difficulty/pain with swallowing <input type="checkbox"/> Loss or change in voice <input checked="" type="checkbox"/> Throat pain <input checked="" type="checkbox"/> Difficulty breathing <input type="checkbox"/> Nausea/vomiting <input type="checkbox"/> Vision/hearing changes

Victim's Statements to FNE

"He grabbed me by the neck and pushed me against the wall with both hands on my neck, I hit the wall with the back of head, he continued to strangle me, I reached out I could barely breathe, but I couldn't reach him because he had his hands straight, I was trying to push him away from me and was holding his shirt, and that is when he hits me in the face in my mouth on my lip, then I yelled for my five year old to grab my phone to call police, he took the phone from my girl and I tried to grab it out of my hand and that is when he grabbed my hand the right wrist and twisted it, I reached out and grabbed the phone and I fell to my knees trying to dial 911 he reached from under me and he used his elbow and hit me on my right shoulder, and he reached and grabbed the phone so I bit his hand, and he punched me on my back and he bite me on my back on my left side by my bra, we were struggling because he was trying to turn off and get the phone, he hit me a couple times on my back, and then he grabbed my five year old and 3 year old into the bathroom and I put my leg into the door to get my kids out and that is when he slammed my leg in the door" "right in my neck, I couldn't breathe I was gasping for breathe and I felt pain in my neck, there was a loud sound like beating in my bed, I coughed a little bit, I have pain in the back of my head, the first time was when he grabbed me on the wall and I switch my body and he grabbed me on the wall again and that is when I hit my head it was immediate"

Trial Challenges

- There are a lot of them!
 - Uncooperative victims
 - Minimal corroboration
 - No visible injury in 50% of cases
 - Often no witnesses
 - Regularly minimal physical evidence
 - Conflicting statements from suspect
 - Problems with investigation
 - Juror miseducation
- How do we overcome these issues?

It Starts with Juror Education

Use your experts!

Case agent

General domestic violence issues

Cycle of violence, recantation

Forensic nurse

Explain the mechanics of strangulation

Lethality of strangulation

(make the jury care!)

No physical injury = no big deal

PREP YOUR EXPERTS!

Many have never testified before!



Many Jurors will Expect to See This...



Your Job is to Prepare Them for This...



- Forensic nurse can testify to this.
- San Diego Strangulation Study, 2013.
 - Most victims lacked physical evidence of being strangled.
 - 50% of cases had no visible injury
 - 35% of cases had injury too minor to photograph
 - Only 15% of cases had injuries significant enough to photograph
 - Only 3% of victims sought medical attention
- It is possible to strangle someone to death without leaving any external marks.

Minimal
Injuries Mean
NOTHING!

Victim Problems

- “Cooperative” victim
 - Never expect cooperation.
 - Pretrial preparation is key.
 - Details increase victim’s credibility.
 - What did she hear, see, smell, feel, during assault?
 - What was she thinking during the assault?
 - How did she feel after?
 - Physical symptoms.
 - Exactly how was she strangled?
 - What is her response to D’s story?

Uncooperative Victim

- Uncooperative victim
 - Just need to get her to court!
 - May be necessary to ask for material witness warrant
 - Be prepared for anything:
 - Memory issues
 - Real or feigned?
 - Minimizing
 - Recanting
 - Hostile witness
 - Impeach!
 - Use body cam footage to show demeanor/symptoms.

Missing Victim

- Can you prove it without her?
 - 911 call—is it coming in?
 - Witnesses
 - Did anyone see the actual strangulation?
 - Can anyone identify D?
 - Statements to forensic nurse
 - Will your FNE come in?
 - Forfeiture by wrongdoing.
 - Get those jail calls!
- Pretrial litigation is key.



Minimal Corroboration? Don't Give Up

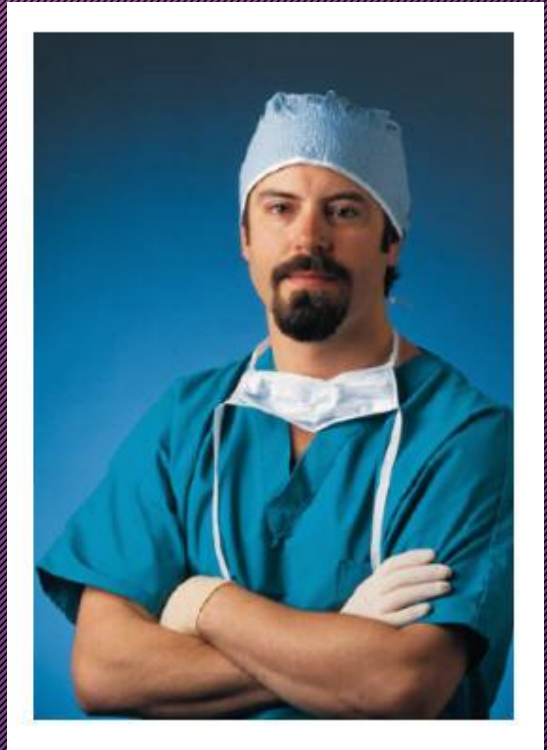
- No Forensic Nurse Exam? All hope is not lost!
 - Look for:
 - Photos of injuries
 - Good description of symptoms in DR
 - Body camera footage of symptoms, injuries?
 - Other medical treatment? Paramedics, hospital?
 - At trial, call forensic nurse to discuss strangulation in general.
 - Sometimes use nurse to discuss photos of injuries and description of symptoms, even if she didn't personally exam victim.

Look for Evidence everywhere: Text messages, Facebook, Statements to family, friends, neighbors: what did they see or hear?

- Neighbors, friends, & family
- Responding officers
- Firefighters/EMTS
- ER doctors/nurses/social workers



- Primary care doctors
- Forensic Nurse Examiner
- Sexual Assault Nurse Examiner



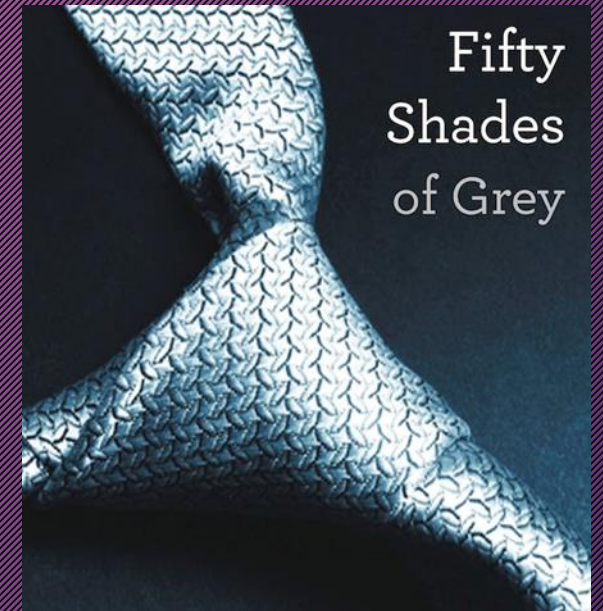
Pretrial

- Motions in Limine
 - Preclude...
 - Victim issues
 - D self-serving hearsay
 - Admit...
 - FNE statements w/out victim.
- 404(b)—get in prior DV
- Crawford—get in that 911 call!
 - Though you don't always want to...
- Consider forfeiture by wrongdoing
 - Get those jail calls!



Combating Common Defenses

- Self-defense?
 - Photographs of suspect—did D have injuries?
 - Size difference
 - Witnesses?
- Rough sex?
 - Talk to your victim!
 - Any corroboration?
 - Vic seen with prior injuries?
- “She’s making it all up to get me in trouble.”
 - Consider everything she has had to do—why would she bother?
 - Does she have a motive to lie?
 - How many people would have to lie to keep the conspiracy going?



Questions?

- gilbertc@mcao.maricopa.gov
- wrightd@mcao.maricopa.gov